

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON, WEST VIRGINIA**

**J.M., a minor,
by and through TANYA LARDIERI,
his Parent and Next Friend,**

Plaintiff,

v.

CIVIL ACTION NO.: 2:15-cv-04822

**LOGAN COUNTY BOARD
OF EDUCATION, *et al*,**

Defendants.

DEFENDANTS' SECOND MOTION TO STRIKE

COME NOW, the Defendants, the Logan County Board of Education, Logan Middle School, Phyllis Adkins, William Davis, Mark McGrew, Dr. Pat White, and James Frye in their official capacities, and Wilma Zigmond, Ernestine Sutherland, David Burroway, Howard Rockhold, Anita Gore, and Christopher Marcus, each in their individual and official capacities, by counsel, Duane J. Ruggier, II, Jacob D. Layne, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, pursuant to Rule 7.1 of the Local Rules of Civil Procedure for the United States District Court of the Southern District of West Virginia and file their motion to strike any pleading of Plaintiff responsive to Defendants' previously filed Motion to Strike (ECF No. 9). In support of this Motion, the Defendants state as follows:

1. Defendants filed their Motion to Dismiss (ECF No. 7) and supporting Memorandum of Law (ECF No. 8) on August 31, 2015.
2. Rule 7.1(a)(7) of the Local Rules of Civil Procedure for the United States District Court of the Southern District of West Virginia states as follows:

Memoranda and other materials in response to motions **shall** be filed and served on opposing counsel and unrepresented parties **within 14 days** from the date of service of the motion.

LR Civ. P. 7.1(a)(7)**[emphasis added]**

3. Pursuant to the above local rule, responses “shall” be filed within 14 days. In accordance with Local Rule 7.1(a)(7), Plaintiff’s Response to Defendants’ Motion to Dismiss was due September 14, 2015.

4. Plaintiff failed to file a pleading responsive to Defendants’ Motion to Dismiss.

5. On October 2, 2015, Defendants filed a Motion to Strike any pleading filed by Plaintiff responsive to Defendants Motion to Dismiss, on the grounds that said pleading would be untimely.

6. Under Local Rule 7.1(a)(7), any pleading of Plaintiff responsive to Defendants’ Motion to Strike was due by October 16, 2015.

7. To date, Plaintiff has failed to file a pleading responsive to Defendants’ Motion to Strike.

7. This Court has also held it appropriate to strike a responsive pleading filed and served outside of the time constraints under Rule 7.1(a)(7). See *Watson v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, No. 5:13-CV-01939, 2013 WL 2000267 (S.D.W. Va. May 13, 2013).

8. Defendants hereby move that this Honorable Court strike any pleading filed by Plaintiff in response to Defendants’ previously filed Motion to Strike, should such pleading be filed prior to this Court’s ruling upon said Motion. Defendants aver that said pleading would be untimely pursuant to Rule 7.1(a)(7).

ACCORDINGLY, Defendants hereby move this Honorable Court to strike any pleading filed by Plaintiff in response to Defendants' Motion to Strike, grant Defendants their costs and fees, impose other sanctions associated with Plaintiff's violation of the Local Rules; and grant Defendants any other relief deemed appropriate by this Honorable Court.

**LOGAN COUNTY BOARD OF EDUCATION,
LOGAN MIDDLE SCHOOL, PHYLLIS
ADKINS, WILLIAM DAVIS, MARK
MCGREW, DR. PAT WHITE, JAMES FRYE,
WILMA ZIGMOND, ERNESTINE
SUTHERLAND, DAVID BURROWAY,
HOWARD ROCKHOLD, ANITA GORE, and
CHRISTOPHER MARCUS,**

BY COUNSEL,

/s/Duane J. Ruggier, II

**DUANE J. RUGGIER II (WVSB #7787)
JACOB D. LAYNE (WVSB #11973)**

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CERTIFICATE OF SERVICE

The undersigned counsel for Defendants do hereby certify on October 20, 2015, that a true copy of
“DEFENDANTS’ SECOND MOTION TO STRIKE” has been filed with the Clerk of the Court using
the CM/ECF system which will send notification of such filing to the below listed CM/ECF participant:

Benjamin F. White, Esquire
Benjamin F. White, Attorney at Law
338 Main Street
Chapmanville, West Virginia 25508
Counsel for Plaintiff

s/Duane J. Ruggier II
DUANE J. RUGGIER II (WVSB #7787)
JACOB D. LAYNE (WVSB #11973)

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